

HOUSE No. 391

By Mr. Marzilli of Arlington, petition of J. James Marzilli, Jr.,
relative to the investment of pension funds. Public Service.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO CORPORATE ACCOUNTABILITY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 23 of chapter 32 of the General Laws is
2 hereby amended by inserting after subsection (5) the following
3 new subsection:

4 (6) Duty to consider long term liabilities. (a) Subject to the
5 approval of the Board, the executive director of the Pension
6 Reserves Investment Management Board shall when investing and
7 reinvesting funds on behalf of the fund, consider, and where
8 appropriate avoid, investments subject to potential long term lia-
9 bilities, including liabilities that may result from potential product
10 or environmental hazards or reputational damage resulting from
11 such potential hazards. The executive director shall consider
12 whether the management of current or potential holdings have
13 quantified, analyzed and discussed such potential long term liabil-
14 ities. The executive director may enter a contract with a third
15 party, such as an independent research firm, to assist in making
16 these determinations and payment of reasonable compensation for
17 these services shall not be considered a violation of fiduciary
18 duties. Any current or former state employee with assets in the
19 PRIT Fund may bring relevant information on such liabilities to
20 the attention of the executive director. The director shall issue a
21 public report no later than January 1 each year on the implementa-
22 tion of this section, including major issues investigated and
23 actions taken pursuant to this paragraph during the preceding cal-
24 endar year. (b) The executive director shall also give due consid-
25 eration to shareholder resolutions and votes on issues germane to

26 potential long term liabilities, and shall prepare and promulgate
27 guidelines for proxy voting on these matters.

1 SECTION 2. Chapter 111F of the General Laws is hereby
2 amended following section 21 by inserting the following new
3 section:

4 Section 22. Additional Duties Of Notice and Disclosure.

5 (a) Except as otherwise provided in this chapter, any business
6 regulated by chapter one hundred and eleven F shall publish on its
7 website on a quarterly basis a report in a format defined by regu-
8 lations adopted under this section which shall include:

9 1) An up-to-date listing of any developments or trends in cus-
10 tomer or stakeholder complaints, or accidents, related to potential
11 harm to human health or the environment that may be caused by
12 the company's products and activities.

13 2) A brief synopsis of any newly published peer reviewed sci-
14 entific literature, government studies, or other credible informa-
15 tion known to the company that may be suggestive of the potential
16 for the company's products, services or activities to cause harm to
17 human health or the environment. The business may also state
18 whether it has other countervailing or exculpatory evidence or
19 studies, and shall include citations to literature referenced, and
20 where any exculpatory studies may be reviewed.

21 3) Litigation facing the company including number of civil
22 cases filed, per year, over the last five years, broken down by sig-
23 nificant categories such as securities; environment; labor; discrim-
24 ination; or antitrust including percent of cases dismissed, percent
25 summary judgment issued to plaintiffs, percent to defendants, per-
26 centage pending and percent settled. This section of the disclo-
27 sure report shall also specifically identify any litigation that
28 alleges a potential "public hazard", and any resolution of such liti-
29 gation.

30 Any person or legal entity required to publish information pur-
31 suant to this section believing that disclosing information required
32 by this chapter will reveal a trade secret may file a trade secrecy
33 claim pursuant to section 20 of chapter 21I.

34 The duties to disclose pursuant to this section shall not apply to
35 any activities for which disclosure is otherwise regulated by an
36 OSHA standard. The Department of Labor and Industries shall

37 promulgate a regulation clarifying the activities that are exempted
38 pursuant to this section.

39 Nothing in this section shall be construed to directly or indi-
40 rectly prohibit, limit or impose conditions, upon the offer or sale
41 of any security regulated by the Securities and Exchange Commis-
42 sion, nor to be a condition upon the sale of securities in the Com-
43 monwealth.

44 “Public hazard” as used in this section means an instrumen-
45 tality, including but not limited to any device, instrument, person,
46 procedure, product, or a condition of a device, instrument, person,
47 procedure or product, that has either caused or has the potential to
48 cause injury to human health or the environment.

49 (b) Duty of Disclosure in Proceedings and Against Document
50 Destruction. It shall be unlawful for a business to knowingly
51 withhold or conceal information on potential hazards of its prod-
52 ucts, processes or activities to human health or the environment,
53 or on the availability of safer alternatives to current or proposed
54 activities, so as to mislead officials of the Commonwealth in a
55 manner that may cause the business, corporate entity or corporate
56 officials to avoid a statutory or regulatory duty, or to avoid a statu-
57 tory or regulatory limit or prohibition. It shall be unlawful for any
58 corporate official to knowingly destroy or falsify documents, or to
59 negligently allow the destruction of documents, so as to conceal
60 or avoid accountability for the potential for harm to health, safety
61 or the environment from the business’s products, practices or serv-
62 ices or the availability of alternatives to such activities.

63 (c) Penalties for Violation. Violations of paragraphs (a) or (b)
64 of this section shall subject the violator to civil penalties of up to
65 \$10,000 per violation. Each instance of noncompliance shall con-
66 stitute a separate violation.

67 (d) Enforcement with respect to Fraud, Deceit or Unlawful con-
68 duct in the sale of goods or securities in the Commonwealth. The
69 information disclosed pursuant to paragraph (a) of this Act may be
70 utilized by the Secretary of State and the Attorney General in
71 investigating and bringing enforcement actions for consumer or
72 securities fraud in the Commonwealth, including false or mis-
73 leading statements or omissions in the offering of goods or securi-
74 ties in the Commonwealth.

75 (e) Regulations and Guidelines. The Executive Office of Envi-
76 ronmental Affairs shall promulgate guidelines within one year of
77 the enactment of this act which shall clarify the manner and form
78 of disclosures under section A of this Act.

1 SECTION 3. The General Laws are hereby amended by
2 inserting after chapter 258C the following new chapter:

3 **CHAPTER 258D.**
4 **SUNSHINE IN LITIGATION; CONCEALMENT OF**
5 **PUBLIC HAZARDS PROHIBITED.**

6 Section 1. This chapter shall be known and may be cited as the
7 “Sunshine in Litigation Act.”

8 Section 2. As used in this chapter, “public hazard” means an
9 instrumentality, including but not limited to any device, instru-
10 ment, person, procedure, product, or a condition of a device,
11 instrument, person, procedure or product or by-product, that has
12 either caused or has the potential to cause injury to human health
13 or the environment.

14 Section 3. Except pursuant to this chapter, no court shall enter
15 an order or judgment which has the purpose or effect of con-
16 cealing a public hazard or any information concerning a public
17 hazard, nor shall the court enter an order or judgment which has
18 the purpose or effect of concealing any information which may be
19 useful to members of the public in protecting themselves from
20 injury which may result from the public hazard.

21 Section 4. Any portion of an agreement or contract which has
22 the purpose or effect of concealing a public hazard, any informa-
23 tion concerning a public hazard, or any information which may be
24 useful to members of the public in protecting themselves from
25 injury which may result from the public hazard, is void, contrary
26 to public policy, and may not be enforced.

27 Section 5. Trade secrets as defined in section one of
28 chapter 111F which are not pertinent to public hazards shall be
29 protected pursuant to section 42A of chapter 93.

30 Section 6. Any substantially affected person, including but not
31 limited to representatives of news media, has standing to contest
32 an order, judgment, agreement, or contract that violates this

33 chapter. A person may contest an order, judgment, agreement, or
34 contract that violates this chapter by motion in the court that
35 entered the order or judgment, or by bringing a declaratory judg-
36 ment action pursuant to chapter 231A of the General Laws.

37 Section 7. Upon motion and good cause shown by a party
38 attempting to prevent disclosure of information or materials which
39 have not previously been disclosed, including but not limited to
40 alleged trade secrets, the court shall examine the disputed infor-
41 mation or materials in camera. If the court finds that the informa-
42 tion or materials or portions thereof consist of information
43 concerning a public hazard or information which may be useful to
44 members of the public in protecting themselves from injury which
45 may result from a public hazard, the court shall allow disclosure
46 of the information or materials. If allowing disclosure, the court
47 shall allow disclosure of only that portion of the information or
48 materials necessary or useful to the public regarding the public
49 hazard.

50 Section 8. (a) Any portion of an agreement or contract which
51 has the purpose or effect of concealing information relating to the
52 settlement or resolution of any claim or action against the state, its
53 agencies, or subdivisions or against any municipality or constitu-
54 tionally created body or commission is void, contrary to public
55 policy, and may not be enforced. Any person has standing to con-
56 test an order, judgment, agreement, or contract that violates this
57 chapter. A person may contest an order, judgment, agreement, or
58 contract that violates this subsection by motion in the court that
59 entered such order or judgment, or by bringing a declaratory judg-
60 ment action pursuant to chapter 231A of the General Laws.

61 (b) Any person having custody of any document, record, con-
62 tract, or agreement relating to any settlement as set forth in this
63 chapter shall maintain said public records in compliance with
64 section ten of chapter 66 of the General Laws. Failure of any cus-
65 todian to disclose and provide any document, record, contract, or
66 agreement as set forth in this chapter shall be subject to the sanc-
67 tions as set forth in section ten of chapter 66 of the General Laws.
68 This subsection does not apply to trade secrets protected pursuant
69 to section 42A of chapter 93, proprietary confidential business
70 information, or other information that is confidential under state
71 or federal law.

72 Section 9. A governmental entity, except a municipality or
73 county, that settles a claim in tort which requires the expenditure
74 of public funds in excess of \$5,000, shall provide notice, in the
75 county in which the claim arose, within 60 days of entering into
76 such settlement; provided that no notice shall be required if the
77 settlement has been approved by a court of competent jurisdiction.